

**NOTICE**  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 4-10-0641

Filed 5/31/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Adams County
DONALD L. PLUNK,	)	No. 10DT131
Defendant-Appellant.	)	
	)	Honorable
	)	Chet W. Vahle,
	)	Judge Presiding.

---

JUSTICE TURNER delivered the judgment of the court.  
Justices Appleton and McCullough concurred in the  
judgment.

**ORDER**

Held: Where the police had reasonable grounds to arrest defendant, the trial court did not err in denying his petition to rescind his statutory summary suspension.

In April 2010, defendant, Donald L. Plunk, was ticketed for driving under the influence (DUI). In June 2010, the Secretary of State's office sent defendant a notice, indicating the statutory summary suspension of his driving privileges for six months. Defendant filed a petition to rescind his statutory summary suspension, which the trial court denied.

On appeal, defendant argues the trial court erred in denying his petition to rescind his statutory summary suspension.

We affirm.

## I. BACKGROUND

In April 2010, Adams County sheriff's deputy Adam Goehl issued a ticket to defendant for driving under the influence pursuant to section 11-501(a)(6) of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/11-501(a)(6) (West 2008)). In June 2010, the Secretary of State's office notified defendant of his six-month suspension.

In June 2010, defendant filed a petition to rescind his statutory summary suspension based on the following grounds: (1) he was not properly placed under arrest, (2) the arresting officer did not have reasonable grounds to believe he was driving or in actual physical control of a motor vehicle while under the influence of alcohol or drugs, (3) he was not properly warned by the arresting officer as required by section 11-501.1 of the Vehicle Code (625 ILCS 5/11-501.1 (West 2008)), and (4) he submitted to the request but the test did not indicate a blood-alcohol concentration of 0.08 or more.

In July 2010, the trial court conducted a hearing on the petition to rescind. Deputy Goehl testified he was on patrol on April 1, 2010, when he received a call of an accident with injuries at approximately 8:30 p.m. Upon arriving at the scene,

Goehl observed a motorcycle in the ditch, a male and female being treated by medical personnel, and a dead deer on the side of the road. Goehl spoke with defendant and asked him if he could produce insurance for the motorcycle and a valid driver's license. One of defendant's "buddies" was able to provide the items to Goehl.

Deputy Goehl stated he did not smell any alcohol on defendant. Several of defendant's buddies said he had recently left a tavern. In his sworn report, Goehl indicated defendant had "red bloodshot eyes." As defendant was transported to the hospital, Goehl took defendant's license, insurance card, wallet, and "a couple of other items that his friends had gathered up."

At the hospital, Deputy Goehl asked defendant if he had consumed any alcohol, and defendant responded he had two to three alcoholic beverages. Goehl did not smell any alcohol on defendant and did not observe anything that led him to believe defendant was under the influence of marijuana or amphetamines. Goehl requested lab results from hospital personnel because of the personal-injury accident and defendant's admitted consumption of alcohol. The lab report indicated defendant's blood-alcohol content was 0.032. The report also indicated defendant tested positive for amphetamines and opiates. Deputy Goehl arrested

defendant at approximately 12:25 a.m. Roughly 15 minutes later, Goehl read the warning to motorist and asked defendant to provide a urine test and a blood test.

The trial court found Deputy Goehl inquired of defendant at the hospital whether he had been drinking and defendant stated he had. Goehl then checked the lab report, which showed positive results for amphetamines and opiates. At that point, the court found Goehl had probable cause to make the arrest and request breath, blood, and urine specimens. The court denied the petition to rescind. This appeal followed.

## II. ANALYSIS

### A. Time of Arrest

Defendant argues the trial court erred in not finding he was under arrest before Deputy Goehl reviewed the initial, hospital-ordered blood test. Defendant contends he was "effectively under arrest" after Deputy Goehl withheld his driver's license and insurance card. We disagree.

"The standard for determining if and when an arrest has occurred is whether, under those circumstances and innocent of any crime, a reasonable person would have felt restrained from leaving." *People v. Gamblin*, 251 Ill. App. 3d 769, 771, 623 N.E.2d 861, 863 (1993). An arrest may be evidenced by the

issuance of a citation, the administration of field-sobriety tests, or the transportation of the motorist to the police station. Gamblin, 251 Ill. App. 3d at 771, 623 N.E.2d at 863.

Here, defendant claims he was effectively arrested when Deputy Goehl seized his driver's license and insurance card, followed him for 40 minutes to the hospital, and defendant was unable to get out of the hospital bed to leave. Defendant's claim has no merit.

Deputy Goehl responded to an accident scene and requested defendant's driver's license and insurance card. Defendant was being treated by ambulance personnel in preparation for transfer to the hospital. The contents of the motorcycle were scattered around the area, and one of defendant's friends gave Deputy Goehl defendant's license and insurance card. Deputy Goehl then followed the ambulance to the hospital and brought defendant's belongings.

One can infer Deputy Goehl found it necessary to transport defendant's belongings from the accident site because defendant left in an ambulance. Goehl's actions show nothing more than good police work, lest he leave the personal items behind or in the custody of alleged "friends." Goehl's retention of defendant's documents cannot be said to have had the same

effect as seizing the items at a traffic stop. This was not a situation where an officer transported a defendant to the police station. Moreover, Deputy Goehl did not prevent defendant from leaving--it was the ambulance and hospital personnel that exerted control over him. Defendant fails to show an arrest prior to his arrest at the hospital.

#### B. Reasonable Grounds To Arrest

Defendant argues the trial court erred in finding reasonable grounds existed to arrest him. We disagree.

According to section 2-118.1(b) of the Vehicle Code (625 ILCS 5/2-118.1(b) (West 2008)), a petition to rescind a statutory summary suspension may be based on grounds to determine (1) whether the motorist was under arrest for DUI; (2) whether the arresting officer had reasonable grounds to believe the motorist was in physical control of a vehicle upon a highway while under the influence of alcohol, drugs, or both; (3) whether the motorist refused to submit to chemical testimony after being advised that such refusal would result in a statutory summary suspension of driving privileges; and (4) whether the motorist submitted to chemical testing and had an alcohol concentration of 0.08 or more.

In the case sub judice, defendant argues no reasonable

grounds existed to arrest him. In a DUI situation, "[r]easonable grounds" is synonymous with "probable cause" People v. Fonner, 385 Ill. App. 3d 531, 540, 898 N.E.2d 646, 654 (2008) (quoting People v. Fortney, 297 Ill. App. 3d 79, 87, 697 N.E.2d 1, 7 (1998)). On appeal, a reviewing court gives deference to the trial court's findings of fact, but the ultimate determination of whether probable cause existed is reviewed de novo. Fonner, 385 Ill. App. 3d at 540, 898 N.E.2d at 654.

"To determine whether reasonable grounds and/or probable cause existed for a defendant's arrest, a court 'must determine whether a reasonable and prudent person, having the knowledge possessed by the officer at the time of the arrest, would believe the defendant committed the offense.' [Citation.] That standard requires the officer to have 'more than a mere suspicion, but does not require the officer to have evidence sufficient to convict.' [Citation.] In analyzing probable cause, we utilize an objective inquiry into the police officer's conduct. [Citation.] Moreover, we note

'probable cause is a fluid concept[,] turning on the assessment of probabilities in particular factual contexts.' [Citation.] Thus, a probable-cause determination is a 'practical, common-sense decision' that requires the consideration of the totality of the circumstances. [Citation.]" Fonner, 385 Ill. App. 3d at 540, 898 N.E.2d at 654.

Here, Deputy Goehl observed defendant's bloodshot eyes at the scene of the accident and became aware that he had come from a tavern. At the hospital, defendant responded to Goehl's question by stating he had two or three alcoholic beverages. Upon receipt of the lab report, Goehl learned defendant did not have a blood-alcohol content of 0.08 or more but he did test positive for opiates and amphetamines.

We find Deputy Goehl had probable cause to arrest defendant in this case. Although defendant argues Goehl demanded to see the lab results without probable cause, section 11-501.4-1(a) of the Vehicle Code (625 ILCS 5/11-501.4-1(a) (West 2008)) provides for the disclosure of blood or urine tests to law enforcement upon request. Further, "blood-alcohol test results reported pursuant to the statute may be used in formulating



probable cause to arrest." *People v. Ernst*, 311 Ill. App. 3d 672, 678, 725 N.E.2d 59, 64 (2000). As the lab report indicated defendant tested positive for opiates and amphetamines, he was properly arrested under section 11-501(a)(6) (625 ILCS 5/11-501(a)(6) (West 2008)).

Defendant, however, argues probable cause was not shown because Deputy Goehl failed to inquire into the potential sources of the substances to determine whether he had unlawfully consumed opiates or amphetamines. However, "[t]he fact that an innocent explanation may be consistent with the facts \*\*\* does not negate probable cause." *Panetta v. Crowley*, 460 F.3d 388, 395, 2nd Cir. 2006), quoting *United States v. Fama*, 758 F.2d 834, 838 (2nd Cir. 1985). Although the trial court was incorrect in stating defendant denied he was on any prescription for opiates or amphetamines, we find the court's ultimate ruling was correct. Deputy Goehl was not required to have evidence sufficient to convict defendant, but the evidence here went beyond mere suspicion and constituted probable cause to arrest defendant for DUI.

#### C. Burden of Proof

Defendant argues the trial court erred in not placing the burden of proof on the State after he established a prima facie case. We disagree.

A hearing on a petition to rescind the statutory summary suspension of driving privileges is a civil proceeding. *People v. Wear*, 229 Ill. 2d 545, 559, 893 N.E.2d 631, 640 (2008). At a hearing on the petition to rescind, the defendant-motorist has the burden of establishing a prima facie case for the rescission. *Fonner*, 385 Ill. App. 3d at 539, 898 N.E.2d at 653. If the prima facie case is established, the burden shifts to the State to present evidence justifying the suspension. *Fonner*, 385 Ill. App. 3d at 539, 898 N.E.2d at 653.

Here, defendant failed to establish a prima facie case for rescission. Goehl's testimony established he had probable cause to arrest defendant based on the properly disclosed hospital lab reports. Even if it could be said that defendant presented a prima facie case, the result of the proceeding would not have been different. Other than the police and lab reports, the only evidence presented by defendant was the testimony of the arresting officer. Thus, the prosecution had no other evidence to present. As Deputy Goehl's testimony established probable cause to arrest, defendant is not entitled to reversal.

### III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment.

Affirmed.